



February 7, 2000

Ms. W. Jan Faber
Assistant General Counsel
The Texas A & M University System
John B. Connally Building
301 Tarrow, 6th Floor
College Station, Texas 77840-7896

OR2000-0449

Dear Ms. Faber:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131939.

The Prairie View A&M University Police Department (the “department”) received a request for two police officer’s personnel files and an offense report, including front page information, and narratives and supplements made by the officers involved in the investigation and arrest. You assert that the personnel files will be released except for information protected by section 552.117(2). With regard to the offense report, you claim that the requester is only entitled to the “front page” of the report pursuant to the ruling in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.–Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). We have considered your argument and reviewed the submitted information.

Section 552.301 of the Government Code provides the following:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and *state the exceptions that apply* within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Gov't Code § 301(a)-(b) (emphasis added). Although you have asked for an attorney general's decision within ten business days, you have failed to state the exceptions that apply to the requested information. We acknowledge that you contend that the requestor is only entitled to the "front page" of the offense report. Section 552.108 of the Government Code does not except from disclosure "front page" or basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c).¹ Therefore, if you had asserted and proven that section 552.108, the law enforcement exception, applied to the requested information, you would only be required to release basic information. However, you have not claimed that the requested information may be withheld under section 552.108, and therefore you may not provide only the basic information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to request an attorney general's in accordance with section 552.301 results in the legal presumption that the information is public and must be released. Gov't Code § 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You have not shown such a compelling interest to overcome the presumption that the information at issue is public. Accordingly, you must release the requested information.

However, you must withhold any information that is confidential by law. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. The offense report contains social security numbers. Social security numbers may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* It is not apparent to us that the social security numbers contained in the offense reports were obtained or are maintained by the department pursuant to any provision

¹We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co.*, 531 S.W.2d at 177.

of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are, therefore, confidential under section 405(c)(2)(C)(vii)(I). We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Gov't Code § 552.352. Prior to releasing the social security numbers, the department should ensure that these numbers were not obtained or are maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

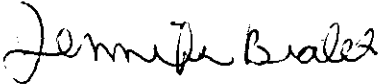
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Jennifer Bialek".

Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/ch

Ref: ID# 131939

Encl. Submitted documents

cc: Ms. R. Jeanette Parham
Attorney at Law
916 Wilkins Street
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(w/o enclosures)